

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

FAO.No. 99 of 2006()

**AGAINST THE ORDER DATED 12/04/2006 IN IA.NO. 443 /2006 IN
OS.3/2006 of DISTRICT COURT, THALASSERY**
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APPELLANT - PETITIONER - PLAINTIFF:

**K.P.ASHRAF, S/O.MUHAMMED KUNHI,
AGED 45 YEARS, THE PROPRIETOR OF ASHRAF TRADERS,
GOPAL STREET, KANNUR-1.**

**BY ADV. SRI.HARIDAS THAIKKANDY
SMT.DAISY THAMPI**

RESPONDENTS RESPONDENTS - DEFENDANTS:

- 1. I.T.C. TRADING COMPANY,
MERCHANT & COMMISSION AGENT, M.A.ROAD,
KANNUR.**
- 2. THE MANAGING PARTNER,
S.P.STORE, PERUMBA, PAYYANNUR, KANNUR DIST.**
- 3. THE MANAGING PARTNER,
ELLAHI TRADERS, HAJI ROAD, KANNUR DIST.**
- 4. THE PROPRIETOR,
KERALA STORE, PERUMBA, PAYYANNUR.**

BY ADV. SRI.A.MOHAMED MUSTAQUE

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD
ON 13/04/2007, ALONG WITH FAO NO. 185 OF 2006
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

K. PADMANABHAN NAIR, J.

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F.A.O. NO. 99 OF 2006

AND

F.A.O. NO. 185 OF 2006

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Dated this the 13th day of April, 2007

J U D G M E N T

Plaintiff-petitioner in I.A.No.443 of 2006 in O.S.No.3 of 2006 and the defendant-respondent in I.A.No.355 of 2006 in O.S. No.2 of 2006 on the file of the District Court, Thalassery is the common appellant in these FAOs. Original Suit No.3 of 2006 is filed by the appellant in these appeals for a decree of injunction against the respondents from selling or marketing their products using the trade mark containing the words "Ashraf Special" and for other reliefs. Original Suit No.2 of 2006 is filed by the respondents in FAO No.185 of 2006 against the appellant to restrain him and his men from continuing the unjustifiable groundless threat or taking any proceedings against them in connection with the sale of Ashraf Special Brand Ghee Rice till the Trademark Registration or the Appellate Authority decides the dispute with respect to the registration of Ashraf Special Brand Ghee Rice after considering

their objections.

2. The appellant as well as the respondents in FAO No.185 of 2006 filed petitions under Order XXXIX Rules 1 & 2 CPC for order of temporary injunction. Both petitions were heard together. The learned District Judge disposed of both the petitions directing the parties to maintain status quo with respect to the stocking, distribution and sale of the rice till the disposal of the matter by the Registrar of the Appellate Board. The parties were restrained from taking any further proceedings on the basis of the disputed registered trade mark till the disposal of the appeal pending before the Appellate Board. These two appeals are filed against that common order.

3. Appellant is admittedly a registered trademark dealer. He filed O.S. No.3 of 2006 against some rival dealers alleging that they are trying to infringe his trade mark and are attempting to sell the products using the same name. According to the appellant he is purchasing rice from one Sree Sree Gangadhar Rice Mill, Burdwan and marketing the same. Appellant produced documents to show that he had obtained the trade mark duly

registered. Contesting respondents contended that the appellant obtained the trade mark by suppressing the material facts and hence they have filed a rectification application before the Intellectual Property Appellate Board, Chennai for revocation of the trade mark granted to the appellant. When the matter came up for hearing before the appellate court, the appellate court took a view that there is an effective alternative remedy provided under Section 124 of the Trade and Merchandise Marks Act, 1958 and the respondents had already approached the Appellate Board for revocation of the trade mark and as such the parties will have to wait till the disposal of the rectification application filed before the Appellate Board. Section 124(5) of the Act enjoins that final disposal of the suit is to be stayed. But there is no bar for the court to pass any interlocutory order.

4. The District court held that the proceedings in both the suits are liable to be stayed till the disposal of the matter by the Registrar of the Appellate Board and directed the parties to maintain the status quo in stocking, distributing and selling of the rice as on the date of the suit. Learned counsel for the appellant

submitted that the Appellate Board by its order dated 30.3.2007 held that the application, ORA. NO. 11 OF 2006, filed by the first respondent in FAO No.99 of 2006 lacks merits and dismissed the same without any order as to costs.

5. A perusal of the impugned order shows that the court below has not considered the contentions raised by the parties on its merits. The proceedings were stayed on a technical ground that the matter was pending before the Appellate Board and directed the parties to maintain status quo till the disposal of the matter by the Appellate Board. Since the appeal is already disposed of, it is only just and proper that the District court consider the injunction applications and dispose of the same on merits in accordance with law as expeditiously as possible.

6. In the result, the appeals are allowed. The common order passed by the District Court, Thalassery on 12.4.2007 in I.A. No.353 of 2006 in O.S. No.2 of 2006 and I.A. No.443 of 2006 in O.S. No.3 of 2006 is hereby set aside. Both applications are remanded to the court below for fresh disposal. The District Court is directed to take I.A. No.353 of 2006 in O.S. No.2 of 2006

F.A.O. NOS.99 AND 185 OF 2006

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and I.A. No.443 of 2006 in O.S. No.3 of 2006 back to file and dispose of those applications in accordance with law after hearing both sides as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this judgment.

Registry is directed to send back the records, if any, called for to the District Court, Thalassery along with a copy of this judgment.

K. PADMANABHAN NAIR, JUDGE.

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K. PADMANABHAN NAIR, J.

M.F.A. NO. OF

J U D G M E N T

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13TH APRIL, 2007